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8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. **2013-317**

13 **KAY ANNETTE MCGINNIS**
20140 Chipmunk Road
Sonora, CA 95370

A C C U S A T I O N

14 **Registered Nurse License No. 568075**

15 Respondent.

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17 Complainant alleges:

18 **PARTIES**

19 1. Louise R. Bailey, M.Ed., RN ("Complainant") brings this Accusation solely in her
20 official capacity as the Executive Officer of the Board of Registered Nursing ("Board"),
21 Department of Consumer Affairs.

22 2. On or about July 6, 2000, the Board issued Registered Nurse License Number 568075
23 to Kay Annette McGinnis ("Respondent"). Respondent's registered nurse license was in full force
24 and effect at all times relevant to the charges brought herein and will expire on June 30, 2014,
25 unless renewed.

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1 7. Code section 2765 states:

2 A plea or verdict of guilty or a conviction following a plea of nolo
3 contendere made to a charge substantially related to the qualifications, functions and
4 duties of a registered nurse is deemed to be a conviction within the meaning of this
5 article. The board may order the license or certificate suspended or revoked, or may
6 decline to issue a license or certificate, when the time for appeal has elapsed, or the
7 judgment of conviction has been affirmed on appeal or when an order granting
8 probation is made suspending the imposition of sentence, irrespective of a subsequent
9 order under the provisions of Section 1203.4 of the Penal Code allowing such person
10 to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside
11 the verdict of guilty, or dismissing the accusation, information or indictment.

12 8. Code section 2770.11 states:

13 (a) Each registered nurse who requests participation in a diversion
14 program shall agree to cooperate with the rehabilitation program designed by a
15 committee. Any failure to comply with the provisions of a rehabilitation program
16 may result in termination of the registered nurse's participation in a program. The
17 name and license number of a registered nurse who is terminated for any reason,
18 other than successful completion, shall be reported to the board's enforcement
19 program.

20 (b) If a committee determines that a registered nurse, who is denied
21 admission into the program or terminated from the program, presents a threat to the
22 public or his or her own health and safety, the committee shall report the name and
23 license number, along with a copy of all diversion records for that registered nurse, to
24 the board's enforcement program. The board may use any of the records it receives
25 under this subdivision in any disciplinary proceeding.

26 COST RECOVERY

27 9. Code section 125.3 provides, in pertinent part, that the Board may request the
28 administrative law judge to direct a licentiate found to have committed a violation or violations of
the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
enforcement of the case.

29 DRUGS

30 10. "Xanax", a brand of alprazolam, is a Schedule IV controlled substance as designated
31 by Health and Safety Code section 11057, subdivision (d)(1).

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**RESPONDENT'S TERMINATION FROM BOARD'S
DIVERSION PROGRAM AS A PUBLIC SAFETY RISK**

11. In or about January 2012, Respondent contacted Maximus, the administrator of the Board's Diversion Program ("program"), and reported that she had received a DUI in December 2010. Respondent was subsequently enrolled in the program. On or about February 1, 2012, during her intake, Respondent informed the Diversion Evaluation Committee ("DEC") that she was returning from the airport after visiting her sister and took two 0.5 mg Xanax. Respondent stated that she "blacked out like she used to with alcohol" and hit another vehicle. On or about February 13, 2012, Respondent contacted the DEC and informed them that she was voluntarily withdrawing from the program. That same day, the DEC terminated Respondent from the program as a public safety risk as they could not substantiate that Respondent was clean and sober or had stopped working as a registered nurse. Additionally, Respondent had not followed through with any of her contract terms.

FIRST CAUSE FOR DISCIPLINE

(Criminal Conviction)

12. Complainant incorporates by reference as though fully set forth herein the allegations contained in paragraph 11 above.

13. Respondent is subject to disciplinary action pursuant to Code section 2761, subdivision (f), in that on or about August 4, 2011, in Stanislaus County Superior Court, Case No. 1432235, Respondent pled guilty to violating Vehicle Code section 23152, subdivision (a) (driving while under the influence of drugs), a misdemeanor. The imposition of Respondent's sentence was suspended and Respondent was placed on probation for 36 months on terms and conditions. The circumstances of the crime are as follows: On or about December 29, 2010, a California Highway Patrol Officer received a call of a traffic collision with an ambulance responding. After arriving on scene, the officer contacted Respondent and noticed distinct signs of impairment. Respondent nearly fell over four times while speaking with the officer and was swaying back and forth, her speech was slurred, and her pupils were constricted. The officer performed field sobriety tests on Respondent, which she was unable to perform as instructed and

1 demonstrated. The officer obtained a PAS (preliminary alcohol screening) sample from
2 Respondent that was .000 percent. Respondent indicated to the officer that she had taken various
3 prescription drugs. Respondent was taken to the Modesto CHP office where a drug evaluation
4 was conducted. The officer conducting the evaluation found that Respondent was under the
5 influence of a narcotic analgesic. At the conclusion of their investigation, the CHP determined
6 that due to Respondent's impairment caused by her prior consumption of a controlled substance,
7 Respondent put her foot on the accelerator instead of the brake, causing the front of her vehicle to
8 collide with the rear of the victim's vehicle.

9 **SECOND CAUSE FOR DISCIPLINE**

10 **(Use of Controlled Substances to an Extent or in a Manner**

11 **Dangerous or Injurious to Oneself and Others)**

12 14. Respondent is subject to disciplinary action pursuant to Code section 2761,
13 subdivision (a), on the grounds of unprofessional conduct, as defined by Code section 2762,
14 subdivision (b), in that on or about December 29, 2010, Respondent used controlled substances,
15 including, but not limited to, Xanax, to an extent or in a manner dangerous or injurious to herself,
16 others, and the public, as set forth in paragraph 13 above.

17 **THIRD CAUSE FOR DISCIPLINE**

18 **(Conviction Related to the Self-Administration of Controlled Substances)**

19 15. Respondent is subject to disciplinary action pursuant to Code section 2761,
20 subdivision (a), on the grounds of unprofessional conduct, as defined by Code section 2762,
21 subdivision (c), in that on or about August 4, 2011, Respondent was convicted of a criminal
22 offense involving the self-administration of controlled substances, as set forth in paragraph 13
23 above.

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1 PRAYER

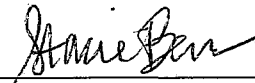
2 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
3 and that following the hearing, the Board of Registered Nursing issue a decision:

4 1. Revoking or suspending Registered Nurse License Number 568075, issued to Kay
5 Annette McGinnis;

6 2. Ordering Kay Annette McGinnis to pay the Board of Registered Nursing the
7 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
8 Professions Code section 125.3;

9 3. Taking such other and further action as deemed necessary and proper.

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11 DATED: OCTOBER 24, 2012



12 for LOUISE R. BAILEY, M.ED., RN
13 Executive Officer
14 Board of Registered Nursing
15 Department of Consumer Affairs
16 State of California
17 Complainant
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